

**ANN BRIGITT LEONARDO AS REPRESENTED BY HER PARENTS
GLORIA LEONARDO AND EDDIE FERNANDEZ, PETITIONERS, VS.
COURT OF APPEALS, HON. TOMAS AFRICA, ET AL., RESPONDENTS.**

G.R. No. 125329. September 10, 2003

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Being assailed in the present petition for review on certiorari is the Court of Appeals Decision of March 11, 1996 and Resolution of May 27, 1996.

Petitioner Ann Brigitt Leonardo was on July 14, 1993 born in Manila to common-law-spouses Eddie B. Fernandez and Gloria C. Leonardo.[1] In her birth certificate, her given surname is that of her mother, Leonardo.[2]

As petitioner's parents later wanted her to carry the surname of her father, the latter executed an affidavit[3] of July 29, 1994 to this effect and wrote a letter[4] of August 1, 1994 to the Local Civil Registrar of Manila requesting for the change of petitioner's registered surname.

The Local Civil Registrar of Manila Lucena D. Dacuan denied the request of petitioner's parents on the ground that petitioner, being illegitimate, should carry her mother's surname as provided under Article 176 of the Family Code[5] which took effect on August 3, 1988.[6] Dacuan also cited Article 412 of the New Civil Code which provides that no entry in the civil register shall be changed or corrected without a judicial order.

Petitioner's parents appealed the denial of their request for change of petitioner's surname to the Civil Registrar General, they citing, among others, the following provision of Title XIII (Use of Surnames), Book I of the New Civil Code:

Article 366. A natural child acknowledged by both parents shall principally use the surname of the father. If recognized by only one of the parents, a natural child shall employ the surname of the recognizing parent.
(Emphasis and underscoring supplied)

Though conceding that the appeal had valid arguments, Civil Registrar General Tomas P. Africa, by letter[7] of December 26, 1994, denied the appeal on the ground that neither the Office of the Civil Registrar General nor any of the Civil Registry Offices in the country is given the power or discretion to effect an administrative change of entry in the civil register.

Petitioner's parents thus sought before the National Economic and Development Authority (NEDA) the review of the Civil Registrar General's decision denying their appeal. NEDA Director-General Cielito F. Habito, by letter[8] of March 21, 1995, replied, however, that functionally, his office has no power or authority to review the decision of the Civil Registrar General on matters pertaining to a local Civil Registry.

Undaunted, petitioner's parents appealed to the Office of the President which, by letter[9] of May 11, 1995,

upheld the decision of the Civil Registrar General and the Local Civil Registrar of Manila that the cancellation or correction of entries in the Civil Registry must be brought directly before courts of law.

Petitioner, represented by her parents, thereupon filed before the Court of Appeals a Petition for Review[10] under Rule 43 of the Revised Rules of Court raising the following issues:

- Whether or not Article 176 of the Family Code be given a mandatory application in case a child was born outside of wedlock even though the putative father acknowledges said child as his and agrees and allows his child to bear his surname [and]
- Whether or not a judicial proceeding is required for the use of [petitioner's] surname.

By Decision[11] of March 11, 1996, the Court of Appeals held that Title XIII, Book I of the New Civil Code on the Use of Surnames was not repealed by the Family Code, citing its repealing clause or Article 254. It held, however, that the Local Civil Registrar of Manila is not allowed to administratively correct the entry in the Civil Registry of the City by deleting and changing petitioner's family name LEONARDO to FERNANDEZ upon the submission of an affidavit of her father recognizing her. It went on to declare that petitioner could change her surname by judicial action pursuant to Rule 108 of the Rules of Court.

Petitioner's motion for reconsideration of the appellate court's decision having been denied by Resolution[12] of May 27, 1996, the present petition raising the following issue was filed:

IF PETITIONER, AS HELD IN THE 11 MARCH 1996 DECISION OF THE HONORABLE COURT OF APPEALS, MAY USE HER NATURAL FATHER'S SURNAME, THE COROLLARY MATTER TO DETERMINE IN THIS CASE IS WHETHER OR NOT RESORT TO RULE 108 OF THE RULES OF COURT REQUIRING JUDICIAL PROCEEDING AND PUBLICATION, IS THE PROPER ACTION TO BE TAKEN - AS DIRECTED IN THE COURT OF APPEALS' DECISION - TO ENABLE THE PETITIONER TO USE HER NATURAL FATHER'S SURNAME.[13]

Ubi jus, ibi remedium.[14] When there is a right, there is a remedy. Conversely, if there is no right, there is no remedy as every remedial right is based on a substantive right.

In the case at bar, the primary issue to be resolved before determining petitioner's available remedy under the facts of the case is whether an illegitimate child born after the effectivity of the Family Code has the right to use her father's surname. This Court rules in the negative.

Article 176 of the Family Code reads:

Article 176. Illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code. The legitime of each illegitimate child shall consist of one-half of the legitime of a legitimate child. (Emphasis and underscoring supplied)

The rule applies even if petitioner's father admits paternity. So *Mossesgeld v. Court of Appeals* holds:[15]

Article 176 of the Family Code of the Philippines provides that "illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code." This is the rule regardless of whether or not the father admits paternity. Consequently, the Local Civil Registrar correctly refused to register the certificate of live birth of petitioner's illegitimate child using the surname of the alleged father, even with the latter's consent . . . (Emphasis and underscoring supplied)

Contrary to the ruling of the Court of Appeals, Article 176 of the Family Code repealed Title XIII, Book I of the New Civil Code regarding the Use of Surnames. Article 254 of the Family Code reads:

Article 254. Titles III, IV, V, VI, VII, VIII, IX, XI and XV of Book I Republic Act 386, otherwise known as

the Civil Code of the Philippines, as amended, and Articles 17, 18, 19, 27, 28, 29, 30, 31, 39, 40, 41 and 42 of Presidential Decree No. 603, otherwise known as the Child and Youth Welfare Code, as amended and all laws, decrees, executive orders, proclamations, rules and regulations, or parts thereof, inconsistent herewith are hereby repealed. (Emphasis and underscoring supplied)

Thus this Court declared in *Mossesgeld*:

The Family Code has effectively repealed the provisions of Article 366 of the Civil Code of the Philippines giving a natural child acknowledged by both parents the right to use the surname of the father. The Family Code has limited the classification of children to legitimate and illegitimate, thereby eliminating the category of acknowledged natural children and natural children by legal fiction. (Emphasis and underscoring supplied)

Since petitioner was born an illegitimate child after the Family Code took effect, she has no right to use her father's surname.

WHEREFORE, upon the ground discussed above, the petition is hereby DENIED.

SO ORDERED.

Panganiban, (Acting Chairman), Sandoval-Gutierrez, and Corona, JJ., concur.
Puno, (Chairman), J., on official leave.

[1] Court of Appeals (CA) Rollo at 13.

[2] *Ibid*.

[3] *Id.* at 14.

[4] *Id.* at 15-16.

[5] Executive Order No. 209, as amended by Executive Order No. 227.

[6] *Atineza v. Billantes*, 243 SCRA 32 (1995).

[7] CA Rollo at 26-27.

[8] *Id.* at 35.

[9] *Id.* at 40.

[10] *Id.* at 6-12.

[11] Rollo at 23-28.

[12] *Id.* at 29.

[13] *Id.* at 11.

[14] *Bouvier's Law Dictionary II*, 8th Edition at 2165.

[15] 300 SCRA 464 (1998).

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